

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 100\*

Agriculture, Marine Resources, and Wildlife Committee Substitute Adopted 2/24/93

House Committee Substitute Favorable 5/7/93

Short Title: Shellfish Lease Authority.

(Public)

Sponsors:

Referred to:

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO VEST AUTHORITY IN THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO GRANT SHELLFISH CULTIVATION LEASES AND TO MAKE CHANGES TO CHAPTER 113 OF THE NORTH CAROLINA GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-202 reads as rewritten:

"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.

(a) To increase the use of suitable areas underlying coastal fishing waters for the production of shellfish, the ~~Marine Fisheries Commission~~ Secretary may grant shellfish cultivation leases to persons who reside in North Carolina under the terms of this section when ~~it determines~~ the Secretary determines, in accordance with his duty to conserve the marine and estuarine resources of the State, that the public interest will benefit from issuance of the lease. Suitable areas for the production of shellfish shall meet the following minimum standards:

- (1) The area leased must be suitable for the cultivation and harvesting of shellfish in commercial quantities.
- (2) The area leased must not contain a natural shellfish bed.
- (3) Cultivation of shellfish in the leased area will be compatible with lawful utilization by the public of other marine and estuarine

1 resources. Other public uses which may be considered include, but are  
2 not limited to, navigation, fishing and recreation.

3 (4) Cultivation of shellfish in the leased area will not impinge upon the  
4 rights of riparian owners.

5 (5) The area leased must not include an area designated for inclusion in  
6 the Department's Shellfish Management Program.

7 (6) The area leased must not include an area which the State Health  
8 Director has recommended be closed to shellfish harvest by reason of  
9 pollution.

10 (b) The ~~Marine Fisheries Commission~~ Secretary may delete any part of an area  
11 proposed for lease or may condition a lease to protect the public interest with respect to  
12 the factors enumerated in subsection (a) of this section. The ~~Marine Fisheries Commission~~  
13 Secretary may not grant a new lease in an area heavily used for recreational purposes.

14 (c) No person, including a corporate entity, or single family unit may acquire and  
15 hold by lease, lease renewal, or purchase more than 50 acres of public bottoms under  
16 shellfish cultivation leases.

17 (d) Any person desiring to apply for a lease must make written application to the  
18 Secretary on forms prepared by the Department containing such information as deemed  
19 necessary to determine the desirability of granting or not granting the lease requested.  
20 Except in the case of renewal leases, the application must be accompanied by a map or  
21 diagram made at the expense of the applicant, showing the area proposed to be leased.

22 The map or diagram must conform to standards prescribed by the Secretary  
23 concerning accuracy of map or diagram and the amount of detail that must be shown. If  
24 on the basis of the application information and map or diagram the Secretary deems that  
25 granting the lease would benefit the shellfish culture of North Carolina, the Secretary, in  
26 the case of initial lease applications, must order an investigation of the bottom proposed  
27 to be leased. The investigation is to be made by the Secretary or his authorized agent to  
28 determine whether the area proposed to be leased is consistent with the standards in  
29 subsection (a) and any other applicable standards under this Article and the rules  
30 of the Marine Fisheries Commission. In the event the Secretary finds the application  
31 inconsistent with the applicable standards, the Secretary shall recommend that the  
32 application be denied or that a conditional lease be issued which is consistent with the  
33 applicable standards. In the event the Secretary authorizes amendment of the  
34 application, the applicant must furnish a new map or diagram meeting requisite  
35 standards showing the area proposed to be leased under the amended application. At the  
36 time of making application for an initial lease, the applicant must pay a filing fee of one  
37 hundred dollars (\$100.00).

38 (e) The area of bottom applied for in the case of an initial lease or amended  
39 initial lease must be as compact as possible, taking into consideration the shape of the  
40 body of water, the consistency of the bottom, and the desirability of separating the  
41 boundaries of a leasehold by a sufficient distance from any known natural shellfish bed  
42 to prevent the likelihood of disputes arising between the leaseholder and members of the  
43 public taking shellfish from the natural bed.

1 (f) Within a reasonable time after receipt of an application that complies with  
2 subsection (d), the Secretary shall notify the applicant whether he recommends  
3 approval, disapproval, or modification of the lease application. In the event the  
4 Secretary recommends approval or a modification to which the applicant agrees, the  
5 Secretary shall conduct a public hearing in the county where the proposed leasehold  
6 lies. The Secretary must publish at least two notices of the intention to lease in a  
7 newspaper of general circulation in the county in which the proposed leasehold lies. The  
8 first publication must precede the public hearing by more than 20 days; the second  
9 publication must follow the first by seven to 11 days. The notice of intention to lease  
10 must contain a sufficient description of the area of the proposed leasehold that its  
11 boundaries may be established with reasonable ease and certainty and must also contain  
12 the date, hour and place of the hearing. The Secretary's recommendation of disapproval  
13 shall become the final agency decision ~~of~~ on the application unless the applicant ~~requests~~  
14 ~~in writing~~ initiates a contested case by filing a petition under G.S. 150B-23 within 20  
15 days of notice of such ~~action~~ an administrative hearing before the Marine Fisheries  
16 Commission. action.

17 (g) ~~Protests to the granting of a proposed lease shall be made either in writing~~  
18 ~~under oath prior to the public hearing held by the Secretary or by testimony under oath~~  
19 ~~during the public hearing.~~ After consideration of the protests public comment received  
20 and any additional investigations he orders to evaluate the protests, comments, the  
21 Secretary shall ~~send to~~ notify the applicant and protesting parties in person or by  
22 certified or registered mail of his final recommendation decision on the lease  
23 application. The Secretary shall also notify persons who submitted comments at the  
24 public hearing and requested notice of the lease decision. An applicant who is  
25 dissatisfied with the Secretary's decision may commence a contested case by filing a  
26 petition under G.S. 150B-23 within 20 days after receiving the Secretary's notice of his  
27 decision, as may other persons meeting the requirements of G.S. 150B-23. In the event  
28 the Secretary's ~~final recommendation decision~~ is a modification to which the applicant  
29 agrees, the lease applicant must furnish an amended map or diagram before the  
30 Secretary's ~~final recommendation~~ can be presented to the Marine Fisheries Commission.  
31 lease can be issued by the Secretary. In the event the Secretary's final recommendation  
32 is inconsistent with a protest, the person filing the protest may request in writing within  
33 20 days of notice of such action an administrative hearing before the Marine Fisheries  
34 Commission. The Secretary's final recommendation of disapproval decision  
35 disapproving an application shall become the final agency decision of on the application  
36 unless the applicant ~~requests in writing~~ initiates a contested case by filing a petition  
37 under G.S. 150B-23 within 20 days of notice of such ~~action~~ an administrative hearing  
38 before the Marine Fisheries Commission. action.

39 (h) ~~The Secretary shall present all lease applications recommended for approval~~  
40 ~~to the Marine Fisheries Commission for final determination. In addition to his final~~  
41 ~~recommendation, the Secretary shall present the official record of the application as~~  
42 ~~developed pursuant to the requirements of this action. The applicants and persons who~~  
43 ~~protested the application shall be given an opportunity to present oral and written~~  
44 ~~arguments based on the official record. Unless the Marine Fisheries Commission, in its~~

1 ~~discretion, refers the matter for an administrative hearing, the Marine Fisheries~~  
2 ~~Commission shall determine all lease applications presented by the Secretary during the~~  
3 ~~public meetings when the matter is presented. The Marine Fisheries Commission,~~  
4 ~~Secretary, in its his discretion, may lease or decline to lease public bottoms in~~  
5 ~~accordance with its his duty to conserve the marine and estuarine resources of the State.~~

6 ~~More than 20 days prior to an administrative hearing conducted pursuant to this~~  
7 ~~section, the Secretary must publish notice of the hearing in a newspaper of general~~  
8 ~~circulation in the county where the proposed leasehold lies. The hearing shall be~~  
9 ~~conducted in the county where the proposed leasehold lies. Protests to the granting of~~  
10 ~~the proposed lease may be made during the administrative hearing by parties to the~~  
11 ~~hearing, intervening parties, and witnesses for parties. When administrative hearings~~  
12 ~~have been conducted pursuant to this section, the Marine Fisheries Commission shall~~  
13 ~~determine the lease applications during the public meeting when the proposal for~~  
14 ~~decision is presented by the hearing officer(s).~~

15 (i) ~~After a lease application is approved by the Marine Fisheries Commission,~~  
16 ~~Secretary, the applicant shall submit to the Secretary a survey of the area approved for~~  
17 ~~leasing and define the bounds of the area approved for leasing with markers in~~  
18 ~~accordance with the rules of the Commission. The survey shall conform to standards~~  
19 ~~prescribed by the Secretary concerning accuracy of survey and the amount of detail to~~  
20 ~~be shown. When an acceptable survey is submitted, the boundaries are marked and all~~  
21 ~~fees and rents due in advance are paid, the Secretary shall execute the lease on forms~~  
22 ~~approved by the Attorney General. If the applicant and the Secretary are unable to agree that~~  
23 ~~the area approved for lease is that shown in the survey, the Secretary shall report the matter~~  
24 ~~with reasonable dispatch to the Marine Fisheries Commission for resolution. The Secretary is~~  
25 ~~authorized, with the approval of the lessee, to amend an existing lease by reducing the~~  
26 ~~area under lease or by combining contiguous leases without increasing the total area~~  
27 ~~leased.~~

28 (j) ~~Initial leases begin upon the issuance of the lease by the Secretary and expire~~  
29 ~~at noon on the first day of April following the tenth anniversary of the granting of the~~  
30 ~~lease. Renewal leases are issued for a period of 10 years effective from the time of~~  
31 ~~expiration of the previous lease. At the time of making application for renewal of a~~  
32 ~~lease, the applicant must pay a filing fee of fifty dollars (\$50.00). The rental for initial~~  
33 ~~leases is one dollar (\$1.00) per acre for all leases entered into before July 1, 1965, and~~  
34 ~~for all other leases until noon on the first day of April following the first anniversary of~~  
35 ~~the lease. Thereafter, for initial leases entered into after July 1, 1965, and from the~~  
36 ~~beginning for renewals of leases entered into after said date, the rental is five dollars~~  
37 ~~(\$5.00) per acre per year. Rental must be paid annually in advance prior to the first day~~  
38 ~~of April each year. Upon initial granting of a lease, the pro rata amount for the portion~~  
39 ~~of the year left until the first day of April must be paid in advance at the rate of one~~  
40 ~~dollar (\$1.00) per acre per year; then, on or before the first day of April next, the lessee~~  
41 ~~must pay the rental for the next full year.~~

42 (k) ~~Except as restricted by this Subchapter, leaseholds granted under this section~~  
43 ~~are to be treated as if they were real property and are subject to all laws relating to~~  
44 ~~taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal~~

1 process, and the like. Leases properly acknowledged and probated are eligible for  
2 recordation in the same manner as instruments conveying an estate in real property.  
3 Within 30 days after transfer of beneficial ownership of all or any portion of or interest  
4 in a leasehold to another, the new owner must notify the Secretary of such fact. Such  
5 transfer is not valid until notice is furnished the Secretary. In the event such transferee is  
6 a nonresident, the Secretary must initiate proceedings to terminate the lease.

7 (l) Upon receipt of notice by the Secretary of any of the following occurrences,  
8 he must commence action to terminate the leasehold:

9 (1) Failure to pay the annual rent in advance.

10 (2) Failure to file information required by the Secretary upon annual  
11 remittance of rental or filing false information on the form required to  
12 accompany the annual remittance of rental.

13 (3) Failure by new owner to report a transfer of beneficial ownership of all  
14 or any portion of or interest in the leasehold.

15 (4) Failure to mark the boundaries in the leasehold and to keep them  
16 marked as required in the rules of the Marine Fisheries Commission.

17 (5) Failure to utilize the leasehold on a continuing basis for the  
18 commercial production of shellfish.

19 (6) Transfer of all or part of the beneficial ownership of a leasehold to a  
20 nonresident.

21 (7) Substantial breach of compliance with the provisions of this Article or  
22 of rules of the Marine Fisheries Commission governing use of the  
23 leasehold.

24 The Marine Fisheries Commission is authorized to make rules defining commercial  
25 production of shellfish, based upon the productive potential of particular areas climatic  
26 or biological conditions at particular areas or particular times, availability of seed  
27 shellfish, availability for purchase by lessees of shells or other material to which oyster  
28 spat may attach, and the like. Commercial production may be defined in terms of  
29 planting effort made as well as in terms of quantities of shellfish harvested. Provided,  
30 however, that if a lessee has made a diligent effort to effectively and efficiently manage  
31 his lease according to accepted standards and practices in such management, and  
32 because of reasons beyond his control, such as acts of God, such lessee has not and  
33 cannot meet the requirements set out by the Marine Fisheries Commission under the  
34 provisions of this paragraph of this subsection, his leasehold shall not be terminated  
35 under subdivision (5) of this subsection.

36 (m) In the event the leaseholder takes steps within 30 days to remedy the situation  
37 upon which the notice of intention to terminate was based and the Secretary is satisfied  
38 that continuation of the lease is in the best interests of the shellfish culture of the State,  
39 the Secretary may discontinue termination procedures. Where there is no discontinuance  
40 of termination procedures, the leaseholder may ~~appeal to the Marine Fisheries Commission.~~  
41 initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of  
42 receipt of notice of intention to terminate. The Secretary shall make the final agency  
43 decision of all lease terminations. Where there is no appeal, or where an appeal does not  
44 prevail, the leaseholder does not initiate a contested case, or the Secretary's final

1 decision upholds termination, the Secretary must send a final letter of termination to the  
2 leaseholder. The final letter of termination may not be mailed sooner than 30 days after  
3 receipt by the leaseholder of the Secretary's notice of intention to ~~terminate.~~ terminate, or  
4 of the Secretary's final agency decision, as appropriate. The lease is terminated effective  
5 at midnight on the day the final notice of termination is served on the leaseholder. The  
6 final notice of termination may not be issued pending hearing of ~~any appeal by the Marine~~  
7 ~~Fisheries Commission.~~ a contested case initiated by the leaseholder.

8 Service of any notice required in this subsection may be accomplished by certified  
9 mail, return receipt requested; personal service by any law-enforcement officer; or upon  
10 the failure of these two methods, publication. Service by publication shall be  
11 accomplished by publishing such notices in a newspaper of general circulation within  
12 the county where the lease is located for at least once a week for three successive  
13 weeks. The format for notice by publication shall be approved by the Attorney General.

14 (n) Upon final termination of any leasehold, the bottom in question is thrown  
15 open to the public for use in accordance with laws and rules governing use of public  
16 grounds generally. Within 30 days of final termination of the leasehold, the former  
17 leaseholder shall remove all abandoned markers denominating the area of the leasehold  
18 as a private bottom. The State may, after 10 days' notice to the owner of the abandoned  
19 markers thereof, remove the abandoned structure and have the area cleaned up. The  
20 cost of such removal and cleanup shall be payable by the owner of the abandoned  
21 markers and the State may bring suit to recover the costs thereof.

22 (o) Every year between January 1 and February 15 the Secretary must mail to all  
23 leaseholders a notice of the annual rental due and include forms designed by him for  
24 determining the amount of shellfish or shells planted on the leasehold during the  
25 preceding calendar year, and the amount of harvest gathered. Such forms may contain  
26 other pertinent questions relating to the utilization of the leasehold in the best interests  
27 of the shellfish culture of the State, and must be executed and returned by the  
28 leaseholder with the payment of his rental. Any leaseholder or his agent executing such  
29 forms for him who knowingly makes a false statement on such forms is guilty of a  
30 misdemeanor punishable in the discretion of the court.

31 (p) All leases and renewal leases granted after the effective date of this Article  
32 are made subject to this Article and to reasonable amendment of governing statutes,  
33 rules of the Marine Fisheries Commission, and requirements imposed by the Secretary  
34 or his agents in regulating the use of the leasehold or in processing applications of  
35 rentals. This includes such statutory increase in rentals as may be necessitated by  
36 changing conditions and refusal to renew lease after expiration, in the discretion of the  
37 ~~Marine Fisheries Commission.~~ Secretary. No increase in rentals, however, may be given  
38 retroactive effect.

39 The General Assembly declares it to be contrary to public policy to the oyster and  
40 clam bottoms which were leased prior to January 1, 1966, and which are not being used  
41 to produce oysters and clams in commercial quantities to continue to be held by private  
42 individuals, thus depriving the public of a resource which belongs to all the people of  
43 the State. Therefore, when the Secretary determines, after due notice to the lessee, and  
44 after opportunity for the lessee to be heard, that oysters or clams are not being produced

1 in commercial quantities, due to the lessee's failure to make diligent effort to produce  
2 oysters and clams in commercial quantities, the Secretary may decline to renew, at the  
3 end of the current term, any oyster or clam bottom lease which was executed prior to  
4 January 1, 1966. The lessee may appeal the denial of the Secretary to renew the lease to  
5 ~~the Marine Fisheries Commission in which event the lessee shall be granted an opportunity to~~  
6 ~~be heard, de novo, by the Marine Fisheries Commission and by initiating a contested case~~  
7 pursuant to G.S. 150B-23. In such contested cases, the burden of proof, by the greater  
8 weight of the evidence, shall be on the lessee. ~~The Marine Fisheries Commission, by~~  
9 ~~majority vote, may affirm or reverse the action of the Secretary. No appeal shall be allowed~~  
10 ~~from the action of the Marine Fisheries Commission.~~

11 (q) Repealed by Session Laws 1983, c. 621, s. 16, effective July 1, 1983."

12 Sec. 2. G.S. 113-202.1 reads as rewritten:

13 **"§ 113-202.1. Water column leases for aquaculture.**

14 (a) To increase the productivity of leases for shellfish culture issued under G.S.  
15 113-202, the ~~Marine Fisheries Commission~~ Secretary may amend shellfish cultivation  
16 leases to authorize use of the water column superjacent to the leased bottom under the  
17 terms of this section when ~~it~~ he determines the public interest will benefit from  
18 amendment of the leases. Leases with water column amendments must produce  
19 shellfish in commercial quantities at four times the minimum production rate of leases  
20 issued under G.S. 113-202, or any higher quantity required by the Marine Fisheries  
21 Commission through duly adopted rules.

22 (b) Suitable areas for the authorization of water column use shall meet the  
23 following minimum standards:

- 24 (1) Aquaculture use of the leased area must not significantly impair  
25 navigation;
- 26 (2) The leased area must not be within a navigation channel marked or  
27 maintained by a state or federal agency;
- 28 (3) The leased area must not be within an area traditionally used and  
29 available for fishing or hunting activities incompatible with the  
30 activities proposed by the leaseholder, such as trawling or seining;
- 31 (4) Aquaculture use of the leased area must not significantly interfere with  
32 the exercise of riparian rights by adjacent property owners including  
33 access to navigation channels from piers or other means of access; and
- 34 (5) Any additional standards, established by the Commission in duly  
35 adopted rules, to protect the public interest in coastal fishing waters.

36 (c) The ~~Commission~~ Secretary shall not amend shellfish cultivation leases to  
37 authorize use of the water column unless:

- 38 (1) The leaseholder submits an application, accompanied by a  
39 nonrefundable application fee of one hundred dollars (\$100.00), which  
40 conforms to the standards for lease applications in G.S. 113-202(d)  
41 and the duly adopted rules of the Commission;
- 42 (2) The proposed amendment has been noticed consistent with G.S. 113-  
43 202(f);
- 44 (3) Public hearings have been conducted consistent with G.S. 113-202(g);

- 1           (4) The aspects of the proposals which require use and dedication of the  
2 water column have been documented and are recognized by the  
3 ~~Commission~~Secretary as commercially feasible forms of aquaculture  
4 which will enhance shellfish production on the leased area;
- 5           (5) It is not feasible to undertake the aquaculture activity outside of coastal  
6 fishing waters; and
- 7           (6) The authorized water column use has the least disruptive effect on  
8 other public trust uses of the waters of any available technology to  
9 produce the shellfish identified in the proposal.
- 10       (d) Amendments of shellfish cultivation leases to authorize use of the water  
11 column are issued for a period of five years or the remainder of the term of the lease,  
12 whichever is shorter. The annual rental for water column amendments is five hundred  
13 dollars (\$500.00) per acre, prorated. The rental is in addition to that required in G.S.  
14 113-202.
- 15       (e) Amendments of shellfish cultivation leases to authorize use of the water  
16 column are subject to termination in accordance with the procedures established in G.S.  
17 113-202 for the termination of shellfish cultivation leases. Additionally, such  
18 amendments may be terminated for unauthorized or unlawful interference with the  
19 exercise of public trust rights by the leaseholder, agents and employees of the  
20 leaseholder.
- 21       (f) Amendments of shellfish cultivation leases to authorize use of the water  
22 column are not transferrable except when the ~~Commission~~Secretary approves the  
23 transfer after public notice and hearing consistent with subsection (c) of this section.
- 24       (g) After public notice and hearing consistent with subsection (c) of this section,  
25 the ~~Commission~~Secretary may renew an amendment, in whole or in part, when the  
26 leaseholder has produced commercial quantities of shellfish and has otherwise complied  
27 with the rules of the Commission. Renewals may be denied or reduced in scope when  
28 the public interest so requires. Appeal of renewal decisions shall be conducted in  
29 accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates  
30 established in subsection (d) of this section.
- 31       (h) The procedures and requirements of G.S. 113-202 shall apply to proposed  
32 amendments or amendments of shellfish cultivation leases considered under this section  
33 except more specific provisions of this section control conflicts between the two  
34 sections.
- 35       (i) To the extent required by demonstration or research aquaculture development  
36 projects, the ~~Commission~~Secretary may amend existing leases and issue leases that  
37 authorize use of the bottom and the water column. Demonstration or research  
38 aquaculture development projects may be authorized for two years with no more than  
39 one renewal and when the project is proposed or formally sponsored by an educational  
40 institution which conducts research or demonstration of aquaculture. Production of  
41 shellfish with a sales value in excess of one thousand dollars (\$1,000) per acre per year  
42 shall constitute commercial production. Demonstration or research aquaculture  
43 development projects shall be exempt for the rental rate in subsection (d) of this section  
44 unless commercial production occurs as a result of the project."



1           Sec. 3. G.S. 113-202.2 reads as rewritten:

2   "**§ 113-202.2. Water column leases for aquaculture for perpetual franchises.**

3       (a) To increase the productivity of shellfish grants and perpetual franchises for  
4 shellfish culture recognized under G.S. 113-206, the ~~Marine Fisheries Commission~~  
5 Secretary may lease the water column superjacent to such grants or perpetual franchises  
6 (hereinafter 'perpetual franchises') under the terms of this section when it determines the  
7 public interest will benefit from the lease. Perpetual franchises with water column  
8 leases must produce shellfish in commercial quantities at four times the minimum  
9 production rate of leases issued under G.S. 113-202, or any higher quantity required by  
10 the Marine Fisheries Commission by rule.

11       (b) Suitable areas for the authorization of water column use shall meet the  
12 following minimum standards:

- 13           (1) Aquaculture use of the leased water column area must not significantly  
14           impair navigation;
- 15           (2) The leased water column area must not be within a navigation channel  
16           marked or maintained by a State or federal agency;
- 17           (3) The leased water column area must not be within an area traditionally  
18           used and available for fishing or hunting activities incompatible with  
19           the activities proposed by the perpetual franchise holder, such as  
20           trawling or seining;
- 21           (4) Aquaculture use of the leased water column area must not significantly  
22           interfere with the exercise of riparian rights by adjacent property  
23           owners including access to navigation channels from piers or other  
24           means of access;
- 25           (5) The leased water column area may not exceed 10 acres for grants or  
26           perpetual franchises recognized pursuant to G.S. 113-206;
- 27           (6) The leased water column area must not extend more than one-third of  
28           the distance across any body of water or into the channel third of any  
29           body of water for grants or perpetual franchises recognized pursuant to  
30           G.S. 113-206; and
- 31           (7) Any additional rules to protect the public interest in coastal fishing  
32           waters adopted by the Commission.

33       (c) The ~~Commission Secretary~~ shall not lease the water column superjacent to  
34 oyster or other shellfish grants or perpetual franchises unless:

- 35           (1) The perpetual franchise holder submits an application, accompanied by  
36           a nonrefundable application fee of one hundred dollars (\$100.00),  
37           which conforms to the standards for lease applications in G.S. 113-  
38           202(d) and rules adopted by the Commission;
- 39           (2) Notice of the proposed lease has been given consistent with G.S. 113-  
40           202(f);
- 41           (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 42           (4) The aspects of the proposals which require use and dedication of the  
43           water column have been documented and are recognized by the

- 1           ~~Commission~~Secretary as commercially feasible forms of aquaculture  
2           which will enhance shellfish production;
- 3           (5)   It is not feasible to undertake the aquaculture activity outside of coastal  
4           fishing waters; and
- 5           (6)   The authorized water column use has the least disruptive effect on  
6           other public trust uses of the waters of any available technology to  
7           produce the shellfish identified in the proposal.
- 8           (d)   Water column leases to perpetual franchises shall be issued for a period of  
9           five years and may be renewed pursuant to subsection (g) of this section. The annual  
10          rental for water column leases shall be five hundred dollars (\$500.00) per acre, prorated,  
11          or the then current renewal rate, whichever is greater.
- 12          (e)   Water column leases to perpetual franchises may be terminated for  
13          unauthorized or unlawful interference with the exercise of public trust rights by the  
14          leaseholder or his agents or employees.
- 15          (f)   Water column leases to perpetual franchises are not transferrable except when  
16          the ~~Commission~~Secretary approves the transfer after public notice and hearing  
17          consistent with G.S. 113-202(f) and (g).
- 18          (g)   After public notice and hearing consistent with G.S. 113-202(f) and (g), the  
19          ~~Commission~~Secretary may renew a water column lease, in whole or in part, if the  
20          leaseholder has produced commercial quantities of shellfish and has otherwise complied  
21          with this section and the rules of the Commission. Renewals may be denied or reduced  
22          in scope when the public interest so requires. Appeal of renewal decisions shall be  
23          conducted in accordance with G.S. 113-202(p). Renewals are subject to the lease terms  
24          and rates set out in subsection (d) of this section.
- 25          (h)   The procedures and requirements of G.S. 113-202 shall apply to proposed  
26          water column leases or water column leases to perpetual franchises considered under  
27          this section except that more specific provisions of this section control conflicts between  
28          the two sections.
- 29          (i)   Demonstration or research aquaculture development projects may be  
30          authorized for two years with no more than one renewal and when the project is  
31          proposed or formally sponsored by an educational institution which conducts  
32          aquaculture research or demonstration projects. Production of shellfish with a sales  
33          value in excess of one thousand dollars (\$1,000) per acre per year shall constitute  
34          commercial production. Demonstration or research aquaculture development projects  
35          shall be exempt from the rental rate in subsection (d) of this section unless commercial  
36          production occurs as a result of the project."
- 37          Sec. 4. G.S. 143B-289.4(2) reads as rewritten:
- 38          "(2)   The Marine Fisheries Commission shall have the power and duty to  
39          establish standards and adopt rules:
- 40                  (a)   Implementing the provisions of Subchapter IV of Chapter 113  
41                  as provided in G.S. 113-134 of the General Statutes of the State  
42                  of North Carolina;
- 43                  (b)   For the disposition of confiscated property as set forth in G.S.  
44                  113-137;

- 1 (c) Governing all license requirements and taxes prescribed in  
2 Chapter 113, Article 14;
- 3 (d) Governing the importation and exportation of fish, and  
4 equipment that may be used in taking or processing fish, as  
5 necessary to enhance the conservation of marine and estuarine  
6 resources of North Carolina as provided in G.S. 113-160;
- 7 (e) Governing the possession, transportation and disposition of  
8 seafood, as provided in G.S. 113-164;
- 9 (f) Regarding the disposition of the young of edible fish, as  
10 provided by G.S. 113-185;
- 11 ~~(g) Regarding the leasing of public grounds for aquaculture,  
12 including oysters and clam production, as provided in G.S. 113-  
13 202;~~
- 14 (h) Governing utilization of private fisheries, as provided in G.S.  
15 113-205;
- 16 (i) Imposing further restrictions upon the throwing of fish offal in  
17 any coastal fishing waters, as provided in G.S. 113-265;
- 18 (j) Governing the location and utilization of artificial reefs in  
19 coastal waters; and
- 20 (k) Regulating the placement of nets and other sports or  
21 commercial fishing apparatus in coastal fishing waters with  
22 regard to navigational or recreational safety as well as from a  
23 conservation standpoint."

24 Sec. 5. G.S. 113-154 reads as rewritten:

25 **"§ 113-154. ~~Oyster, scallop and clam~~ Shellfish and crab licenses.**

- 26 (a) ~~In addition to all other license requirements, every individual engaged in taking~~  
27 ~~oysters, scallops, or clams~~ It is unlawful for an individual to take shellfish or crabs from  
28 the public or private grounds of North Carolina by mechanical means or for commercial  
29 use by any means ~~whatever must have without having~~ first procured an individual ~~oyster,~~  
30 ~~scallops, and clam~~ shellfish and crab license.
- 31 (b) It is unlawful for any individual to take ~~oysters, scallops, or clams~~ shellfish or  
32 crabs for commercial use from the public or private grounds of North Carolina without  
33 having ready at hand for inspection a current and valid ~~oyster, scallop, and clam~~ shellfish  
34 and crab license issued to him personally and bearing his correct name and address. It is  
35 unlawful for any such individual taking or possessing freshly taken ~~oysters, scallops, or~~  
36 ~~clams~~ shellfish or crabs to refuse to exhibit his license upon the request of an officer  
37 authorized to enforce the fishing laws.
- 38 (c) ~~Oyster, scallop, and clam~~ Shellfish and crab licenses are issued annually on a  
39 fiscal year basis upon payment of a fee of ~~four dollars (\$4.00)~~ fifteen dollars (\$15.00)  
40 upon proof that the license applicant is a resident of North Carolina: Provided, that  
41 persons under 16 years of age are exempt from the license requirements of this section  
42 if they are accompanied by their parent or guardian who is in compliance with the  
43 requirements of this section or if they have in their possession their parent's or  
44 guardian's ~~oyster, scallop, and clam~~ shellfish and crab license. Notwithstanding G.S. 113-

1 130, for purposes of this subsection, a North Carolina resident means a person that has  
2 resided in North Carolina for six months immediately preceding the application for the  
3 shellfish and crab license.

4 (d) In the event an individual possessing ~~an oyster, scallop, and clam~~ a shellfish and  
5 crab license changes his name or address or receives one erroneous in this respect, he  
6 must within 30 days surrender the license for one bearing the correct name and address.  
7 An individual prosecuted for failure to possess a valid license is exonerated if he can  
8 show that the invalidity consisted solely of an incorrect name or address appearing in a  
9 license to which he was lawfully entitled and that the erroneous condition had not  
10 existed for longer than 30 days.

11 (e) It is unlawful for an individual issued ~~an oyster, scallop, and clam~~ a shellfish  
12 and crab license to transfer or offer to transfer his license, either temporarily or  
13 permanently, to another. It is unlawful for an individual to secure or attempt to secure ~~an~~  
14 ~~oyster, scallop, or clam~~ a shellfish and crab license from a source not authorized by the  
15 Marine Fisheries Commission."

16 Sec. 6. This act is effective upon ratification.